United Nations A/HRC/32/34

General Assembly

Distr.: General
5 April 2016

Original: English

Human Rights Council
Thirty-second session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the independence of judges and lawyers

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the independence of judges and lawyers, Mónica Pinto, prepared pursuant to Council resolution 26/7. The report is the first written by the Special Rapporteur since she took up her duties on 1 August 2015. In the report, she recalls the origins of the mandate and the international and regional legal framework that has been studied, assessed and developed in the work of her three predecessors. She notes that, despite a comprehensive international and regional legal framework which details the preconditions and prerequisites necessary in order to have an independent, competent and impartial judiciary and an independent and qualified legal profession, such independence and impartiality are still extremely vulnerable, are under attack or are merely non-existent, in many parts of the world.

Against this backdrop, the Special Rapporteur explains that it is time to revisit the well-established principles of judicial independence and impartiality, and the important body of work, including the recommendations, left by her predecessors, with a view to helping all stakeholders to take concrete measures to render the independence and impartiality of the justice system more effective. To that end, she proposes to begin working on a set of indicators of independence and impartiality which could be used by State institutions, judges, prosecutors, lawyers, civil society actors, donors and cooperation agencies, among others, to assess the independence and impartiality of specific justice systems, to identify needs for reform, and to allow targeted measures and actions to be taken to improve the administration of justice and the justice system in a more effective way.

The Special Rapporteur concludes by recalling the centrality of the independence of judges and lawyers to the promotion and protection of human rights and mentions specific issues that she hopes to continue monitoring or to study in more detail during her tenure.

GE.16-05469 (E)

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I. Introduction

1. The present report is the first report written by the Special Rapporteur on the independence of judges and lawyers, Mónica Pinto, since she took up her duties on 1 August 2015. It is submitted in accordance with Human Rights Council resolution 26/7.

2. The Special Rapporteur takes the opportunity in her first report of stressing how much she has inherited from her predecessors, Gabriela Knaul, Leandro Despouy and Param Cumaraswamy, who gave visibility and recognition to the mandate while interpreting its scope and content. These former special rapporteurs clarified and consolidated the requirements necessary to achieve and maintain the independence and impartiality of the justice system, through both their thematic reports and their country visit reports. Taking their legacy into account is essential when looking into future ways to improve and strengthen the independence of the judiciary and the legal profession.

3. The Special Rapporteur notes that, despite a comprehensive international and regional legal framework which details the preconditions and prerequisites necessary to have an independent, competent and impartial judiciary and an independent and qualified legal profession, such independence and impartiality are still extremely vulnerable, are under attack or are merely non-existent, in many parts of the world. Against this background, she believes that it is time to revisit these well-established principles and the recommendations put forward by her predecessors, with a view to helping all stakeholders to take concrete measures to render the independence and impartiality of the justice system more effective. To that end, she proposes to begin working on a set of indicators of independence and impartiality which could be used by State institutions, judges, prosecutors, lawyers, civil society actors, donors and cooperation agencies, among others, to assess the independence and impartiality of specific justice systems, to identify needs for reform, and to allow targeted measures and actions to be taken to improve the administration of justice and the justice system in a more effective way.

4. The Special Rapporteur started to present her approach and ideas in her address to the Third Committee of the General Assembly in October 2015, when she presented the last thematic report prepared by her predecessor (A/70/263). In the present report, after reviewing the activities that she has carried out since taking up her duties (part II), she continues to explain her approach and the background against which she will be working (part III). She then provides preliminary information on the work that she proposes to carry out on indicators (part IV). She concludes by recalling the centrality of the independence of judges and lawyers to the promotion and protection of human rights and mentions some additional topics that she hopes to be in a position to study in more detail during her tenure (part V).

II. Activities since 1 August 2015

5. The activities carried out by the Special Rapporteur's predecessor between 1 March and 31 July 2015 are listed in her predecessor's last report to the General Assembly (A/70/263). From 1 August 2015 to 15 March 2016, the Special Rapporteur participated in the activities set out below.

A. Country visits

6. The Special Rapporteur carried out her first official country visit from 10 to 16 October 2015, to Guinea-Bissau, to examine and analyse the achievements and challenges

of Guinea-Bissau in ensuring the independence of judges, prosecutors and lawyers, as well as a fair and competent administration of justice (see A/HRC/32/34/Add.1). She thanks the authorities for their invitation and their engagement with her mandate and hopes that concrete measures will be taken to implement her recommendations. She also encourages the international donor community to take account of her report and to consider the recommendations contained therein when establishing their cooperation priorities and deciding on specific initiatives.

7. The Special Rapporteur would also like to thank the Government of Sri Lanka for inviting her, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Méndez, to conduct a joint visit to the country from 29 April to 7 May 2016. The final report of that visit will be presented to the Human Rights Council at its thirty-fifth session, in June 2017.

8. Since 1 August 2015, the Special Rapporteur has sent requests for official visits to the Governments of Ecuador and Lebanon, as well as reminders of pending requests for visits to the Governments of China, Egypt, the Islamic Republic of Iran and the Bolivarian Republic of Venezuela. She also sent a letter to Kenya, which had accepted a country visit request sent by her predecessor, confirming her interest in conducting a visit and proposing it take place during the second half of 2016. At the time of writing the present report, she had not received replies to these various requests.

9. Finally, the Special Rapporteur wishes to acknowledge the positive replies of the Governments of France, Germany, Greece, Iraq, Morocco, Nepal, Spain and the United States of America to the country visit requests sent by her predecessor. In this context, she wishes to thank the authorities of the countries concerned. She also informs the Human Rights Council that she will give consideration to the aforementioned replies in due course.

B. Communications and press releases

10. From 1 August 2015 to 29 February 2016, the Special Rapporteur sent a total of 55 communications, to 32 Member States from all regional groups and to one other entity, in the form of 46 urgent appeals (84 per cent of the communications) and 9 allegation letters (16 per cent of the communications). These communications, together with the responses from Governments, are included in the communications reports of special procedures (for those sent between 1 August and 30 November 2015, see A/HRC/31/79, and for those sent between 1 December 2015 and 29 February 2016, see A/HRC/32/53).

11. All 55 communications were sent jointly with other special procedure mandate holders. In the Special Rapporteur's opinion, this reflects the reality that situations in which the independence and impartiality of judges, lawyers and prosecutors, the proper functioning of the justice system and the right to due process of law and a fair trial are affected very often occur when other democratic institutions are at risk or when a variety of human rights are concurrently being violated, such as the right not to be subjected to arbitrary arrest or detention, the right not to be subjected to torture or ill-treatment, the right to freedom of opinion and expression, the right not to be subjected to discrimination, or the right to freedom of peaceful assembly and association.

12. A large majority of the communications addressed issues related to violations of guarantees of due process of law or of a fair trial, such as the lack of access or inadequate access to a lawyer, hearings held in closed session without justification, violations of the principle of equality of arms and the right to a defence, the trial of civilians before military courts, or the lack of impartiality of judges. In about a dozen of the communications, allegations relating to lack of due process or lack of a fair trial were raised in the context of cases where persons had been sentenced to, or were facing being sentenced to, the death

penalty. A dozen communications contained allegations of violations of the rights and independence of lawyers, which included killings, attacks, threats, intimidation, harassment and detention, as well as undue restrictions on their work. A few communications raised issues concerning undue pressures on prosecutors, and threats, attacks and intimidation directed against judges, as well as enforced disappearances and incommunicado detentions.

13. The Special Rapporteur wishes to underline that the above-mentioned communications exclusively reflect information that was transmitted to her and was subsequently acted upon. Complaints that contained insufficient information, that fell outside the scope of the mandate, or that the Special Rapporteur was not in a position to act upon owing to time, workload or other constraints, are not reflected in the numbers provided in the present report. Besides, problems regarding the independence and impartiality of the justice system are not limited to the States or entities to which communications were sent. Therefore, the fact that a particular State or entity may not have received a communication should not be interpreted as indicating that there are no challenges concerning the independence and impartiality of the judiciary and the administration of justice in that State or entity.

14. At the time of writing the present report, the overall reply rate for the communications sent by the Special Rapporteur was 42 per cent. The Special Rapporteur wishes to encourage States to reply promptly to all the communications that they receive and to address the specific violations and concerns identified therein in a meaningful way, in particular when the communications concern time-sensitive issues that may have irreversible consequences for people.

15. The Special Rapporteur used media releases to bring public attention to situations that she identified as particularly concerning. Excluding press releases and public statements related to her country visit, she issued a total of 10 media releases; 9 of those addressed specific country situations across regional groups and 1 focused on a particular theme related to the mandate. All 10 media releases were sent jointly with other special procedure mandate holders.

C. Other activities

16. Shortly after she took up her duties, from 14 to 18 September 2015, the Special Rapporteur was in Geneva for a series of meetings and consultations.

17. On 15 September 2015, she participated as a moderator in a side event of the Human Rights Council entitled "Judges, lawyers, prosecutors and human rights: 30 years of UN action". The event was convened by the International Bar Association's Human Rights Institute and the International Commission of Jurists. It was co-sponsored by the Permanent Missions of Australia, Botswana, Hungary, Ireland and Thailand, and the Council of Europe, as well as by the Association for the Prevention of Torture, Avocats sans frontières, the Colombian Commission of Jurists, the Commonwealth Lawyers Association, the Commonwealth Magistrates and Judges Association, the International Legal Assistance Consortium, Judges for Judges, and Lawyers for Lawyers.

18. The side event commemorated the thirtieth anniversary of the Basic Principles on the Independence of the Judiciary,[1] and the twenty-fifth anniversary of the Basic Principles

[1] Adopted by the seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan, Italy, from 26 August to 6 September 1985, and endorsed in General Assembly resolutions 40/32 and 40/146.

on the Role of Lawyers and of the Guidelines on the Role of Prosecutors.[2] In this context, the Special Rapporteur emphasized that nowadays the independence of the judiciary is considered integral to the protection of human rights and to enforcement of the rule of law. She described these three sets of principles and guidelines as the most essential expression of the standards relating to judicial independence and impartiality and the independence of the legal profession.

19. On 16 September 2015, the Special Rapporteur held an open informal consultation with representatives of civil society, including associations of legal professionals.

20. On 17 September 2015, the Special Rapporteur participated as a panellist in a side event of the Human Rights Council that was entitled "Fair trials and judicial accountability in Maldives: ways forward" and was organized by Amnesty International. At this side event, she recalled the conclusions and recommendations of her predecessors who had conducted official visits to Maldives: Mr. Despouy in 2007 and Ms. Knaul in 2013. She also highlighted the concerns expressed by Ms. Knaul on the deterioration of the independence of the judiciary since 2013.

21. On 27 October 2015, the Special Rapporteur presented the last thematic report of her predecessor to the Third Committee of the General Assembly (A/70/263). In the first part of the report, Ms. Knaul recounted the numerous activities that she had carried out during her six years as Special Rapporteur, providing details and statistics on country visits, communications and media releases, among other things. In the second part of the report, she reviewed the issues and topics that she had addressed over the course of her mandate, categorizing them into seven thematic clusters: education, training and capacity-building of judges, lawyers and prosecutors; access to justice and legal aid; challenges to the independence and impartiality of judges; protecting the independence of lawyers; safeguarding the independence and impartiality of prosecutors and the autonomy of prosecution services; equality before the courts and fair trial guarantees; and impunity for human rights violations.

22. The Special Rapporteur also made use of her oral presentation to recall the main lines of her mandate, and to emphasize that ensuring the independence and integrity of the justice system requires continuous attention and monitoring in order to identify and tackle new or re-emerging problems and challenges triggered by societal, political and economic changes.

23. On 14 December 2015, the Special Rapporteur participated by means of videoconference in the sixth annual Geneva Forum of Judges and Lawyers, organized by the International Commission of Jurists, which focused on judicial accountability. During her keynote intervention, she stressed that independence and accountability were both indispensable to ensuring the suitability and integrity of members of the judiciary and respect for the rule of law. She recalled that judges and prosecutors must only be removed from office for proved incapacity, conviction for a crime, or conduct that renders them unfit to discharge their professional duties. She also cautioned against the very thin line that lies between accountability and undue pressure or interference.

24. On 14 and 15 January 2016, the Special Rapporteur participated — together with fellow special rapporteurs — as a panellist and expert in a seminar on human rights and election standards, organized in Atlanta, United States of America, by the Carter Center. The event, which was attended by former President Carter, was aimed at exploring ways to foster the work of the special procedures of the Human Rights Council in election

[2] Both adopted by the eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, Cuba, from 27 August to 7 September 1990.

contexts and to improve cooperation between the special procedures and organizations working on election monitoring. In this context, the Special Rapporteur presented her views about the requirements of independence and impartiality of the members of election complaint adjudicatory bodies.

25. On 8 March 2016, the Special Rapporteur delivered a statement at a training event on the universal human rights system, organized by the OHCHR Regional Office for South America, the Office of the United Nations High Commissioner for Refugees and the Secretary of Human Rights of the Government of Argentina, and held in Buenos Aires. In her lecture, she described the work of the special procedures and explained their working methods to a group of State officials.

26. Finally, on 10 March 2016, the Special Rapporteur delivered the inaugural address at the permanent training course for magistrates and judicial personnel in San Miguel de Tucumán, Argentina, at the invitation of the Office of Human Rights and Justice of the Supreme Court of the Province of Tucumán. She focused on the main features of justice in the twenty-first century. She talked about human rights and the right to justice, and in particular about access to justice, the requirements of independence and impartiality, and the need for continuing legal training, including training on international human rights law and gender issues. She also stressed that social perceptions were important: justice should not be distant from people or expensive for them, or take too long to be done.

III. The independence of the justice system revisited

A. Origins of the mandate

27. The mandate of the Special Rapporteur on the independence of judges and lawyers was established by the Commission on Human Rights, in its resolution 1994/41, to inquire into allegations of interference and attacks on the independence of the judiciary, lawyers and court officials; to identify and record those attacks, but also the progress achieved in this area; and to study important and topical questions of principle with a view to protecting and enhancing the independence of judges, lawyers, prosecutors and court officials.

28. Yet, the United Nations had showed concern about the independence of judges, prosecutors and lawyers well before the creation of the mandate. Early in 1980, the Sub-Commission on Prevention of Discrimination and Protection of Minorities (later known as the Subcommission on the Promotion and Protection of Human Rights) appointed L.M. Singhvi as Rapporteur to work on this issue. He submitted several successive reports,[3] and a final one that included the Draft Universal Declaration on the Independence of Justice containing a body of important principles relating to the independence of judges and lawyers.[4] The Sub-Commission decided to refer the theme to the Commission on Human Rights, which recommended that the principles contained in Mr. Singhvi's draft declaration be taken into consideration when enforcing the Basic Principles on the Independence of the Judiciary, which had been adopted in 1985.[5]

29. In 1989, Louis Joinet, expert member of the Sub-Commission, was appointed to prepare a working paper on the means of monitoring the Basic Principles on the

[3] A preliminary report in 1980 (E/CN.4/Sub.2/L.731) and progress reports in 1981 (E/CN.4/Sub.2/481 and Add.1), 1982 (E/CN.4/Sub.2/1982/23) and 1983 (E/CN.4/Sub.2/1983/16).
[4] See E/CN.4/Sub.2/1985/18 and Add.1-6.
[5] See E/CN.4/RES/1989/32.

Independence of the Judiciary.[6] The work of both Mr. Singhvi and Mr. Joinet led to the creation in 1994 of the mandate of the Special Rapporteur on the independence of judges and lawyers.

B. International legal framework

30. The international legal framework supporting the mandate's goals is well established and universal. It includes treaty law, such as article 14 of the International Covenant on Civil and Political Rights, adopted by the General Assembly in December 1966 and in force for 168 States, and its regional counterparts, such as article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, of 1950, which is in force for the 47 European States members of the Council of Europe, article 8 of the American Convention on Human Rights, of 1969, which is in force for 23 States members of the Organization of American States, article 7 of the African Charter on Human and Peoples' Rights, of 1981, which is in force for 53 States members of the African Union, or articles 12, 13 and 16 of the Arab Charter on Human Rights, of 2004, which is in force for 13 States members of the League of Arab States.

31. Article 14 of the International Covenant on Civil and Political Rights, the most universal of these treaty provisions, has been the object of interpretation by the Human Rights Committee through its general comments,[7] as well as in its jurisprudence and concluding observations on the periodic reports of States parties to the Covenant. Such interpretation is extremely valuable in order to assess the scope of the independence of the justice system and its main features.

32. The independence of justice is also protected under article 10 of the Universal Declaration of Human Rights, of 1948, and under articles xviii and xxvi of the American Declaration of the Rights and Duties of Man, also of 1948. Later, in 1985, the seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the Basic Principles on the Independence of the Judiciary, which would be endorsed shortly afterwards by the General Assembly. Moreover, as noted by Mr. Cumaraswamy in the first report he submitted to the then Commission on Human Rights, "the general practice of providing independent and impartial justice is accepted by States as a matter of law and constitutes, therefore, an international custom in the sense of Article 38 (1) (b) of the Statute of the International Court of Justice."[8]

33. This rather comprehensive set of international and regional rules and standards was complemented, five years later, with the Basic Principles on the Role of Lawyers and the Guidelines on the Role of Prosecutors, adopted in 1990 by the eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The Special Rapporteur notes that, while these principles were first conceived and viewed as additional essential guarantees to ensure fair and impartial justice for all those prosecuted under criminal charges, nowadays the independence of the judiciary is no longer strictly associated with criminal justice matters. Rather, an independent and impartial justice system is considered integral and inherent to the protection and promotion of human rights and the rule of law. The independence of the judiciary and the legal profession is also central to the right to an adequate and effective remedy for human rights violations.

[6] See E/CN.4/RES/1989/22.

[7] See, in particular, general comment No. 32 on the right to equality before courts and tribunals and to a fair trial.

[8] See E/CN.4/1995/39, para. 35.

34. The scope and requirements of an independent and impartial justice system have also been addressed in quite some detail and in a variety of situations in the jurisprudence of regional human rights courts. For example, the Inter-American Court of Human Rights has stressed the applicability of article 8 of the American Convention on Human Rights — the provision on the right to a fair trial — to the decisions taken by any public authority that exercises jurisdictional functions.[9] In another case, the Court ruled that requirements of independence and impartiality must also be enforced in cases relating to decisions taken by adjudicatory bodies in the context of electoral matters.[10] For its part, the European Court of Human Rights has determined that it is particularly important for the institution in charge of electoral administration to function in a transparent manner and to maintain impartiality and independence from political manipulation.[11] In turn, the Committee of Ministers of the Council of Europe has recommended that if disciplinary measures need to be taken relating to judges, the law should provide for appropriate procedures to ensure that they are given at least all the due process requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), particularly that the case should be heard within a reasonable time frame and that they should have a right to answer any charges.[12] Many more decisions of the regional courts clarify the scope of application of the principles of judicial independence and impartiality.

35. Despite such a comprehensive legal framework and body of jurisprudence and interpretation, the independence of judges, lawyers and prosecutors is still extremely vulnerable, is under attack or is merely non-existent, in many parts of the world. That is why revisiting the principles of an independent and impartial justice system with a view to recommending concrete ways to render such independence more effective seems timely to the Special Rapporteur. In order to do so, the Special Rapporteur will not only need to take existing international norms and standards into account, but also pay attention to the context in which independence has to be assured and preserved and address the commitments, or lack thereof, of all stakeholders, in particular States.

C. Need for a democratic context

36. In light of this legal framework, it is evident that the natural context for the realization of the independence of judges, lawyers and prosecutors is that of a democracy. All human rights treaties refer to a democratic society as the natural environment for the protection and promotion of human rights. What is necessary in a democratic society is also the measure against which restrictions to human rights and fundamental freedoms will be assessed to determine if they are acceptable or not. A functioning democracy ensures the separation of powers and, as noted by the first Special Rapporteur, "the principle of the separation of powers... is the bedrock upon which the requirements of judicial independence and impartiality are founded".[13]

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[9] Inter-American Court of Human Rights, *Constitutional Court v. Peru*, Judgment of 31 January 2001, Series C No. 55.

[10] Inter-American Court of Human Rights, *Yatama v. Nicaragua*, Judgment of 23 June 2005, Series C No. 127.

[11] European Court of Human Rights, *Georgian Labour Party v. Georgia*, Judgment of 8 October 2008; and European Court of Human Rights, *Namat Aliyev v. Azerbaijan*, Judgment of 8 July 2010

[12] Recommendation No. R (94) 12 of the Committee of Ministers to member States on the independence, efficiency and role of judges.

[13] See E/CN.4/1995/39, para. 55.

37. However, democracy is not static; it is evolving with societies and presents different characteristics. Yet, none of these characteristics must impair the core principles of the independence and impartiality of the justice system.

38. A strong and independent legal profession is also needed to ensure access to justice and the right to equality before the courts and a fair trial, including specific due process of law guarantees in criminal proceedings. For this reason, lawyers must be free to consult and assist their clients, provide legal advice and exercise their profession in a free and secure environment.

D. Committing to the independence of judges and lawyers

39. Clear commitments from governments and other political and economic actors, but also from judges, prosecutors and lawyers themselves, to respecting, protecting and strengthening the independence and impartiality of the justice system are also necessary. Any legal provision protecting the independence of judges, lawyers or prosecutors becomes useless if there is no commitment to respect and enforce it. Moreover, whenever one of these groups "forgets" the specific roles they have to play in a democratic society — roles which come with both rights and duties — the prerequisites of independence become difficult to fulfil.

40. States must respect and protect the independence of judges, prosecutors and lawyers at different levels and in different ways. States have to observe appropriate mechanisms for the selection, appointment, promotion, transfer and discipline of judges and prosecutors, in line with the respective international norms and standards. They also have to put in place mechanisms to protect judges, prosecutors and lawyers against pressure, interference, intimidation and attacks and to ensure their security.

41. States should also promptly and diligently abide by or enforce judicial decisions and judgments. Furthermore, States should show their commitment to an independent, impartial and competent justice system by providing adequate infrastructures, facilities and material resources for the judiciary to perform its duties, allocating a reasonable part of the national budget to the justice sector. States should also commit to enacting legislation necessary to ensure the protection of the independence and impartiality of the justice system.

42. States should respect the independence of lawyers too and recognize the important role they play, including by providing for their security and allowing them to associate freely. It is not possible or reasonable to imagine that justice can be done without independent and competent lawyers. States must therefore ensure that lawyers are in a position to practise their profession without obstacles.

43. States should strive to ensure access to justice for all, including by setting up institutionalized legal aid schemes free of charge for those lacking resources. In this context, the Special Rapporteur notes that, on 25 September 2015, the 193 Member States of the United Nations committed themselves to providing access to justice for all, in adopting the 2030 Agenda for Sustainable Development (see Sustainable Development Goal 16).

44. States should also ensure that anyone can enter the legal profession, the prosecution services and the judiciary without discrimination of any sort, in particular on the grounds of gender; States should promote greater representation of women and minorities.

45. Independence is not a prerogative of judges, it is their duty. Judges should be fully aware of the distinct function that they have in society and of how they are perceived by people. Judges are expected to keep social peace through adjudication of claims and settlement of disputes, applying the law. They have an obligation to deliver justice

impartially and on an equal footing to all. In doing so, they should ensure that they are independent, from a personal, a political but also an intellectual point of view. They should be completely detached from the parties in the litigation. They should also be individually autonomous and enjoy what Owen Fiss called political insularity, that is, independence from political institutions and the public in general.[14]

46. Lawyers, too, have to commit to the independence of their profession and recognize the central role they play in the justice chain. Practising law is not a business but a profession which comes with specific rights but also essential duties and a code of deontology to respect. Lawyers put their knowledge at the service of representation and defence of their clients.

E. Building a domestic culture of judicial independence

47. Domestic rules and standards are important for many reasons. They have both a symbolic and a legal value and they inform the public on the behaviours that are acceptable and those that are prohibited. A review of domestic legal provisions in order to enshrine the requirements for the independence of judges, lawyers and prosecutors is imperative for more than one State.

48. However, norms alone are not sufficient. They require a legal culture, that of the rule of law, in which respect for the independence of judges and lawyers plays a crucial role. Such a legal culture is built through both formal education, delivered in law schools and schools for the judiciary, and informal education, which requires political acts and signals, including at the highest level of government, to send adequate messages highlighting the importance of respecting and enforcing these rules. In this case, government officials, political and social leaders, and academics have an important role to play. An official discourse hostile to the independence of judges, lawyers and/or prosecutors, even if not followed by concrete action, contributes to delegitimizing the judiciary and to undermining the main mechanism at the disposal of democratic societies for the peaceful settlement of disputes and for providing an effective remedy to victims of human rights violations.

49. As seen above, a solid set of international legal rules, standards and principles aimed at ensuring and reinforcing the independence and integrity of the justice system exists today. In many countries, a comprehensive set of domestic rules and principles is in place too. Yet, independence should not be taken for granted. Indeed, ensuring independence requires continuous attention and monitoring to identify and tackle new or re-emerging problems and challenges triggered by societal, political and economic changes. These challenges require proper action by States but also adequate monitoring by civil society and other stakeholders.

IV. Indicators

50. The Special Rapporteur considers that it is a priority that judges, prosecutors, lawyers, State institutions, and other stakeholders, including the international community, be able to gather information on the independence, impartiality and effective functioning of specific justice systems in a more systematic and consistent way in order to assess them against international standards on the matter.

[14] Owen Fiss, "The limits of judicial independence", *University of Miami Inter-American Law Review*, vol. 25, No. 1, p. 57.

51. Currently, there is no universal system that provides detailed and specific information on the actual situation of national justice systems. Yet, such information is crucial to be able to assess their level of independence and to design measures to improve and strengthen them that will be both appropriate and effective. Some categories of information can assist in understanding the context in which a justice system works, other categories provide indications on procedures and requirements in place for the exercise of the jurisdictional function, and others allow the dysfunctionalities of the system to be inferred. The Special Rapporteur believes that such information would be useful to build a frame of reference for States, international organizations and civil society to be able to study how justice systems work, assess their independence and impartiality, and identify deficits and challenges. Having precise information should allow for better and more effective decisions and measures.

52. The Special Rapporteur is aware of the growing demand for both qualitative and quantitative indicators to help in promoting and monitoring the implementation of human rights. Indicators are useful tools to articulate and advance claims on the duty-bearers, and to formulate public policies and programmes that facilitate the realization of human rights. In 2012, the Office of the United Nations High Commissioner for Human Rights published a guide aimed at translating the narrative of human rights into contextually relevant indicators and benchmarks for the implementation and measurement of human rights at the country level.[15] When it comes to the independence of judges and lawyers, the use of appropriate indicators could provide precise and relevant information on a given justice system which would help the State and other stakeholders, including the Special Rapporteur, in assessing progress in the implementation of international human rights obligations relating to independence and impartiality.

53. The Special Rapporteur is convinced of the timeliness of developing a set of indicators that would provide information on national justice systems, including on the way they are structured and how they comply with international standards and norms on independence and impartiality. Indicators provide factual information and data that can be essential in order to understand specific situations and assess the implementation progress of human rights obligations.

54. The use of indicators has led to the development of mapping exercises, especially at the regional level, such as those carried out by the European Union[16] or the Justice Studies Centre for the Americas,[17] as well private initiatives focusing on a set of indicators relating to the structure of the justice system, how it works, and the quality of the services it delivers.[18] These initiatives may have different purposes, but they all provide extremely useful information related to the independence and impartiality of justice systems.

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[15] *Human Rights Indicators: A Guide to Measurement and Implementation*, HR/PUB/12/5, New York and Geneva, 2012.

[16] European Commission, Directorate-General for Justice, *The 2015 EU Justice Scoreboard*, COM (2015) 116 final. The foreword to this document indicates that "the EU Justice Scoreboard provides an overview of the quality, independence and efficiency of EU member States' justice systems. Together with individual country assessments, the EU Justice Scoreboard helps to identify possible shortcomings or improvements and to regularly reflect on progress."

[17] Centro de Estudios de Justicia de las Américas, *Cifrar y Descifrar: Manual para generar, recopilar, difundir y homologar estadísticas e indicadores judiciales*, vol. 2 (2005).

[18] See, for instance, Germán Garavano and others, "Indicadores de desempeño judicial", Foro de Estudios sobre la Administración de Justicia, in *La Ley Actualidad*, Buenos Aires, 18 July 2000; and Todd Foglesong and others, "Measuring progress towards safety and justice: a global guide to the design of performance indicators across the justice sector", Vera Institute for Justice, New York, 2003.

55. Specific indicators can measure different dimensions of justice systems. By way of illustration, indicators can shed light on the composition of personnel of the justice sector, their training, the budgetary resources allocated to them, their salaries, or even the level of judicial independence.

56. There are many reasons to justify the need for indicators focused on the justice system. First, such indicators are a useful tool for drawing a more accurate map of the situation in each country. On the basis of information obtained through these indicators, States can diagnose problems more precisely and develop more effective solutions to improve the issues and dysfunctions identified. These specific indicators will therefore constitute an instrument for States to better manage their respective judicial systems.

57. Second, judicial indicators can enable dialogue, on both the needs and the progress achieved by justice systems, between the different groups involved — those that have a role to play in the system and those that benefit from it, including judges, lawyers, prosecutors, government officials, members of civil society, or the international donor community.

58. The Special Rapporteur believes that judicial indicators could serve as a framework for assessing the status of the various institutions of justice in a given State and as a compass for countries wishing to progress and to achieve better performance of their justice sector.

59. The Special Rapporteur notes that indicators will not involve, initially, an evaluation system on the quality of each judicial system. They should consist of a set of benchmarks allowing study of the status of essential judicial structures.

60. For these reasons, the Special Rapporteur hopes to develop, during the course of her mandate, a proposition for judicial indicators to increase awareness of the role of justice in every country. To do so, she will develop an initial project that will be presented to the Human Rights Council and other stakeholders in due course, in which she wishes to incorporate the different perspectives described in the present report in order to propose a menu of indicators with a degree of acceptance by the international community.

V. Conclusions and considerations

61. The present report expresses the preliminary views of the Special Rapporteur on her mandate and the particular project that she hopes to carry out. Essentially, she has noticed that there is, today, a fairly complete set of principles and prerequisites regarding the independence of judges, prosecutors and lawyers, which have been recognized in a significant number of international and regional instruments, some of which are binding on States, and have been developed through the jurisprudence of regional courts, treaty bodies, and other interpretative documents, including the thematic and mission reports of former mandate holders.

62. Forty years after the entry into force of the International Covenant on Civil and Political Rights, thirty years after the adoption of the Basic Principles on the Independence of the Judiciary, and twenty-five years after the adoption of the Basic Principles on the Role of Lawyers and the Guidelines on the Role of Prosecutors, the time has come for the independence of judges, prosecutors and lawyers to be revisited.

63. In the present context, renewed commitments to the principles of an independent and impartial justice system are necessary in order to make them a reality. All stakeholders, including political authorities, and members of the judiciary, the legal profession and the prosecution services, but also civil society representatives, should be aware of the role of independent judges, prosecutors and lawyers in a

democratic society and should contribute to respecting and protecting this independence.

64. The Special Rapporteur considers it is a priority that the actors in the justice system, other stakeholders and the international community be informed of the status and progress of a particular judicial sector, through a system of indicators that make relevant information accessible. Currently, the international community lacks such a universal system that is able to provide consistent and comprehensive information on the actual situation of national judicial systems.

65. The Special Rapporteur believes that it is necessary but also timely to develop a set of indicators that will provide precise and relevant information on national judicial institutions and the way they comply with international standards of judicial independence. Judicial indicators have the potential to shed light on different dimensions of a justice system.

66. Finally, the Special Rapporteur will strive to reinforce understanding of the universality and centrality of her mandate as regards the protection and promotion of human rights. In doing so, she will continue to look into issues already addressed by her predecessors, such as access to justice, Sustainable Development Goal 16, the independence and situation of prosecutors, integrity and accountability of the judiciary, and the situation of lawyers and particularly the obstacles to the independent exercise of their profession and grave violations committed against them, as well as the role that should be played by bar associations to protect lawyers' independence and strengthen the rule of law, the trial of civilians before military and special courts, and impunity for human rights violations, among others that warrant the attention of the mandate as well as of the Human Rights Council.